UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v. File No. 1:10-CR-236

SOLOMON JULIUS CARPENTER,

Defendant.
_____/

Sentencing

Before

THE HONORABLE ROBERT HOLMES BELL
United States District Judge
April 4, 2011

APPEARANCES

MARK V. COURTADE
Assistant U.S. Attorney
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Grand Rapids, MI 49501
Attorney for Plaintiff

CARROUS F. ROBINSON
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Attorneys for Defendant

Also Present: Amber L. Gonzalez, U.S. Probation Officer

Kevin W. Gaugier, CSR-3065
U.S. District Court Reporter

Grand Rapids, Michigan
April 4, 2011
1:22 p.m.

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P R O C E E D I N G S

THE COURT: You may be seated.

This is the matter of United States v. Solomon Julius Carpenter. Mr. Courtade represents the United States Attorney's Office. Mr. Robinson and Ms. Young represent Mr. Carpenter in this matter.

A plea was tendered in this matter on October 21st to Count 1 of an -- you may be seated, sir -- to Count 1 of an indictment charging possession with intent to distribute more than five grams of cocaine base, 21 United States Code 841(a)(1) and 841(b)(1)(B)(iii). A plea agreement was entered and accepted by this Court at that time, the Court having found at that time that the charges pled to adequately reflect the seriousness of the offense behavior.

Subsequent to that time a change of plea was filed -- motion was filed. A failure to appear at the trial date (sic) which was established of January 24th, 2011, caused a warrant for the arrest of Mr. Carpenter to be implemented. It appears that there was a motion to remove Mr. Upshaw as

counsel filed by Mr. Carpenter and to substitute Mr. Robinson and Ms. Young on behalf of Mr. Carpenter in this matter, and the Court has received just the 1st of this month a motion to withdraw plea and a motion for a preliminary examination. I'm not sure quite how to interpret that, but this has been filed here apparently by Mr. Carpenter. At least that's his -- the line after this motion follows with him, and it appears to have within it some requests of setting aside the plea and other such matters.

At this time, Mr. Robinson, are you ready to be -- will you wish to be heard on these various motions?

MR. ROBINSON: Yes, Your Honor. We're ready to proceed.

THE COURT: You may come to the podium and I'll listen to you.

MR. ROBINSON: Your Honor, the Court is well aware of the history of this matter, and that history includes a plea of guilty pursuant to a Rule 11 agreement following the abandonment of an earlier plea agreement. The Court is aware that the first plea agreement was not accepted for the reason that Mr. Carpenter at that time --

THE COURT: Excuse me. Excuse me. There's something going on here. What is that music?

MS. YOUNG: I apologize, Your Honor.

THE COURT: Okay. Continue, please.

MR. ROBINSON: For the reason that at the time of the first plea attempt and immediately following, Mr. Carpenter continued to profess his innocence, claiming that the attempt to plead guilty was induced by duress, I believe was the language that he used, and the Court did not accept it at that time. It appears that immediately thereafter his counsel contacted the U.S. attorney and advised that there had been a change of heart as it relates to the desire to enter a plea pursuant to the Rule 11 agreement, and immediately thereafter, I believe on October 21st, Mr. Carpenter was before you and entered a plea. He now seeks to ask the Court to permit him to withdraw that plea and allow him to have a trial on the matters contained in the indictment.

Your Honor is well aware that the case law recognizes consideration of some seven factors in the Court determining whether the Court would permit a withdrawal of the plea or would not permit the withdrawal of the plea. These factors, these seven factors include and it seems from this counsel's reading of the cases that a primary concern or the primary concern is a consideration of the timeliness of his protesting his plea.

Let me say for the record that I believe sometime in January this counsel consulted with the defendant, at which time the history of the matter was reviewed. I believe this was prior to his scheduled sentencing date. I'm not certain

of that date, and I mention it only to say that immediately following his plea he expressed the desire to have that plea withdrawn.

THE COURT: Now, let me see if I understand it. I have a sentencing date set that was set for January 24th and apparently it appears that your client did not attend, and it appears that the motion to withdraw the guilty plea was filed on the 28th here of March of this year. Is that right?

MR. ROBINSON: Yes.

THE COURT: And your appearance was entered when?

MR. ROBINSON: I'm not sure of the date.

THE COURT: Do you happen to have that from the government?

MR. COURTADE: I'm looking right now. I think I do.

THE COURT: I'm sorry. I've got your appearance, I think --

MR. ROBINSON: I'm sorry, Judge?

THE COURT: I think I have your appearance of the 7th of March. Is that right?

MR. ROBINSON: About that time, Your Honor. I believe that is.

THE COURT: Okay. I'm sorry to interrupt you. Continue. Continue.

MR. ROBINSON: Yes. Your Honor, let me just

indicate that I believe I was first consulted, not retained, but consulted in January. I mention that only as it relates to the timeliness of his assertions of innocence and of his assertion of his desire to have his plea withdrawn. I recognize that it was sometime later when the motion was in fact filed, but I am hopeful that the Court would take into consideration the totality of the circumstances in dealing with that question, the timeliness.

What I'm suggesting, Your Honor, is that the desire to have the plea withdrawn was determined immediately again following the plea. It was a follow-up to the first rejection, really, and I mention it again only as it relates to the timeliness. We understand that the plea -- that the motion itself was not filed until sometime later, but the Court we're hopeful will consider the totality of the circumstances.

First of all, as the Court well knows, we are substitute counsel. Secondly, substitute counsel could not come into a case claiming anything, and when I say claiming anything I'm talking about giving an opinion, any opinion about anything related to the case, without being reasonably acquainted with the facts, circumstances, and the history of that case. So that when he consulted with me, we were not in a position to reasonably discuss it.

I do not know at what point, but at some point the

Court is aware that he had failed to appear for sentencing. And at some later date, and I don't have that date, I contacted counsel to advise that his intent was to surrender himself as soon as possible, and what I was talking about was that he had hoped to make my office conversant with the circumstances so that we could reasonably discuss it with him, and when that was done, he would turn himself in. That's what he did. That was a later date for the reason that it took some time for this counsel to become in any way acquainted with this -- the tortured history of this case.

He had prior counsel, Mr. Upshaw, and for some reason, Your Honor, he was unhappy with Mr. Upshaw, and the Court -- which resulted I believe in Mr. Upshaw indicating a desire to withdraw which resulted in standby counsel being appointed.

THE COURT: When did that happen, do you remember?

MR. ROBINSON: Yes.

THE COURT: When did standby counsel -- when was standby counsel appointed? Here it is. Here it is.

MR. ROBINSON: I'm sorry, Judge?

THE COURT: Here it is. Standby counsel -- I'm sorry I'm so vague on this. I'm trying to keep the -- standby counsel was --

MR. ROBINSON: Stroba, I believe.

THE COURT: -- was involved in Upshaw's motion to

withdraw.

MR. ROBINSON: Yes.

THE COURT: The Court denied it, but it appointed the Public Defender's Office to act as standby for the limited purpose of conferring with defendant and Mr. Upshaw prior to and at the time of sentencing. Is that about right?

MR. ROBINSON: I believe so.

THE COURT: And that was on December 20th, right?

MR. ROBINSON: Yes.

THE COURT: And the plea was tendered on October 21st, approximately two months before that.

MR. ROBINSON: That's right.

THE COURT: And does the Probation Department -- can you tell me when the Presentence Investigation Report was sent to all the parties? I don't see a date here as to when it was completed or sent.

PROBATION OFFICER GONZALEZ: It was mailed on December 3rd, Your Honor.

THE COURT: December 3rd, okay.

MR. COURTADE: Your Honor, it was also electronically filed I think on December 6th by notice that we received, so --

THE COURT: December 6th, all right. I got the timeline now. All right. I've got my dates. Continue.

MR. ROBINSON: Yes. Your Honor, prior to all of

this he had protested his innocence. The presentence and his actual movement in this regard, the presentence report and his interview I must acknowledge was a factor in the final determinations, and I say that for this reason. There was conflict between his initial attorney, temporary resolution by the plea. Mr. Carpenter was advised, he believed, of a possible sentence disposition, a part of which included the question of acceptance of responsibility.

At the time of his interview for anticipating the presentation of a presentence report, he understood in his language and his interpretation that his reliance upon the advice of counsel in advising him that he would be given points for acceptance of responsibility was mistaken. In other words, he understood that he had received bad advice from his counsel. The immediate advice that he would not be given points for acceptance of responsibility came from the Probation Department, which led him to believe, rightfully or wrongfully, that he could not rely upon the advice of counsel and that he had been misled. All of these considerations were factors relating to the delay in presenting a motion to withdraw the plea.

Additionally, recent counsel have requested the file from former counsel, including all of the police reports, et cetera, and did not receive them. I believe it was only last week, the week before last that we actually received them.

But present counsel did not want to proceed without reviewing the entire history, including the discovery material, the police reports, with the hope that somewhere in all these documents would be something that would support the position and the claim of Mr. Carpenter.

So I'm just saying that all of these circumstances and factors related to the delay. But again, the timeliness of it, even though it may be a critical factor, is just one of seven factors, and the Court is well aware of all of them. The reason for the delay was because present counsel did not feel that he had sufficient information upon which to proceed.

He had at all times asserted his innocence. The Court is aware of the factors underlying the entry of the plea; that is, that he had initially asserted it was under duress. He asserted that he was innocent. But he now claims that he was persuaded by virtue of the Rule 11 to accept it notwithstanding his claim of innocence. There's no potential prejudice to the government, and the Court should allow the withdrawal of the plea. Again, Your Honor, I think Your Honor is thoroughly familiar with the facts and circumstances, history.

THE COURT: You have an affidavit filed by your client asserting his innocence and asserting --

MR. ROBINSON: There are affidavits on file, Judge.

THE COURT: Okay.

MR. ROBINSON: In fact, the most recent affidavit was -- well, there were two, one that was prepared by my office and then a pro se affidavit that was filed by Mr. Carpenter. We received notice I believe that the pro se affidavit came through in such a manner that it could not be read, and what we did was sent it back in, typed it up, retyped it so that the Court could read it. Yes, but there are affidavits on file, Your Honor, supporting the position of the defendant here.

THE COURT: Okay. Response, Mr. Courtade?

MR. COURTADE: Your Honor, we filed an extensive brief in this case where we dispute much of what the defendant claims and especially his veracity. The defendant entered his -- first of all, as to the first plea on December -- I'm sorry, October 15th, the defendant -- that plea was not abandoned because the defendant said I'm innocent. The Court refused to accept it because he did not acknowledge the elements of the crime.

The decision not to accept it had nothing to do with his claim that he was under duress. The Court went over that extensively with the defendant and confirmed that his claim of duress was nothing more or less than he didn't like the fact that he could be supplemented if he did not accept the plea, and he was willing to go forward and stated that he was not

under duress. It's just when it came to the point of admitting the elements of the crime, he refused to do so.

Now, immediately following that aborted attempt, his counsel approached the government and indicated that the defendant had a change of heart and the defendant was directing counsel to schedule a new plea and then changed some of the terms of the agreement.

THE COURT: What terms did you change?

MR. COURTADE: We changed the agreement so that we would be dismissing the supplemental information that we had filed in the meantime, Your Honor.

THE COURT: In other words, you dismissed the enhancement?

MR. COURTADE: Yes. The government asserts that if defendant would have produced his prior attorney, his attorney would quite frankly contradict most of what the defendant says about his claim that he asserted innocence after the guilty plea in October. The defendant, it is our position, never made such a claim to defense counsel, and his counsel, they have chosen strategically not to produce him today because of that. Additionally, it's our understanding counsel has letters from the defendant wherein the defendant does not make any assertion or claim of innocence and is happy to proceed towards sentencing.

On November 19th, almost a month after the plea, the

defendant filed a motion to be released on bond and attached to it a letter to the Court in which he never claimed he'd been forced to do anything. In fact, he seemed very accepting of the sentencing that was going to be coming and stated to the Court that he looked forward to the opportunity to rehabilitate himself. At no time did he suggest there was any problem with counsel or that counsel wasn't acceding to his wishes. The Court denied that motion on November 23rd. The defendant in his letter attached to that motion had indicated he was hoping to get out of jail for Christmas, and it became clear that he probably wouldn't.

I find it interesting that it was on November 29th that the defendant was interviewed by the Pretrial Services officer preparing the presentence report, and the defendant never claimed at that point that he had been browbeaten into a plea, never claimed that he was innocent, never claimed that he had a problem with counsel. In fact, what he started to do was lie as to the acceptance of responsibility over his lawyer's attempts to get him to stick with the truth and not make these other outrageous statements.

The presentence report was disclosed between December 3rd and December 6th, and it's clear defense counsel met with his client and discussed the presentence report and the fact that he was not going to be -- it was not recommended that he receive acceptance of responsibility credit. That

forced defense counsel -- their altercation forced defense counsel on December 8 to move to withdraw as counsel, and that's the first time it ever appears anywhere in any document that the government's aware of that the defendant was claiming that he had been tricked into entering a plea.

Defense counsel would have taken the position that his client was not tricked and that his client's accusation that he was is what caused defense counsel to move to withdraw, and it is our understanding that the defense counsel has letters from the defendant saying I don't want you to withdraw. I want you to stay as my attorney. It was defense counsel who was not going to put up with the allegations being raised by the defendant.

I note that on December 17th the defendant tested positive for drug usage while at KPEP. He was told that -- it was our understanding he was led to believe that since he was going to be going to court in a couple of days, that the motion was going to be that his bond be revoked and he be put in full custody. He absconded the next day on December 18th. He failed to appear in court on December 20th when counsel had -- the hearing was held on the request of counsel to withdraw. Counsel in court that day stated his client was aware of the proceeding and did not appear. He also informed the government that he was in telephone contact with the defendant who was still in the area.

The defendant failed to appear at sentencing on December 24th (sic). He was aware of that date from the time that he pled guilty on the 21st. Between January 24th and March 4th when the defendant surrendered, there were many attempts to locate the defendant in Kalamazoo, including the second half of February, within the last week or ten days of February, the United States Marshal's Service executed a search warrant at his mother's home where he was believed to have been staying and then went and sought him out at various locations he was connected with in Kalamazoo.

Several days later the United States learned from present counsel that the defendant was in Flint and wanted to surrender, but he didn't for several weeks. He finally surrendered on March 4th of this year. When we were in court on March 7th defense counsel said that they were prepared to file a motion to withdraw the guilty plea in the case and that they just wanted to look at the file for more information, but they were well aware of the requirements of filing that motion and that they were intended to comply.

I cannot read the affidavit of Solomon Carpenter that was attached to the motion wherein he supposedly allegedly claims he had asserted his innocence. I am aware of the pro se motion and affidavit that was attached. I can read that one because it's been retyped by counsel.

It's our position that the defendant has failed,

fails on six of the seven tests that are required to withdraw your guilty plea, the seventh being absolute prejudice to the government. While there's great inconvenience and expense, there may not be prejudice because we still have the evidence after ten months. But in reality every other factor, as we've outlined in our brief, weighs heavily against the defendant.

He waited more than 155 days to file his motion. He absconded on bond. His claims are not supported by affidavit, and certainly he is not supporting them with testimony of his counsel who would, we believe, refute virtually all his claims and allegations, and that's a strategic decision on his part not to go forward and to produce that type of evidence.

We believe the defendant's affidavit contains falsehoods. Certainly his -- the one affidavit we can read contains several issues that we would take exception with. Find my copy of it.

We believe, therefore, in actuality the Court should deny the motion, and in fact the defendant should be charged with obstructing justice at the time that the Court does impose sentence. His statement that his attorney told him to abscond on bond we believe is false. His claim he was forced to plead guilty was false. If his claim is to be believed, he would have lied to the Court under oath at the time of his guilty plea, which under 3C1.1 is grounds for finding obstruction. His claim that his attorney told him to lie we

believe is fabricated, and his absconding on bond is evidence of not only failure to accept responsibility, but is evidence of obstruction as well.

THE COURT: Do you wish to respond briefly before the Court rules?

MR. ROBINSON: Your Honor, let me just clarify one thing. I mentioned his discussions with the probation agent, and what got him extremely concerned, Your Honor, was that on the first plea, on the first plea there was a -- there was struck out a portion where he waived his rights to challenge the sentence and lines were drawn through it. That was not so on the second Rule 11 agreement.

But let me just get back to this question of notice of his claim, and I'm sure Your Honor has been exposed to people who enter a plea sometime for the reason they believe that to be a better disposition because it would be unknown as to how a jury would look at the facts in any case, and nobody in any case could guarantee that. But on the essential question, if we look at the presentence report itself, and this relates to his concern, under Paragraph 42, and I recognize that which is is, but the drafter of that report says: "Mr. Carpenter has provided several versions of the offense conduct. He stated during the presentence interview that he had never sold drugs in his life, contrary to what he told the arresting officers and the Court during his plea of

guilty."

Your Honor, I mention that only to indicate an acknowledgment of his early protesting of his innocence. In fact, in the same paragraph the writer says he told Pretrial Services he's being railroaded by the federal government and he is innocent of the charges. Your Honor, I mention that again only in relationship to his early claims, much, much earlier than indicated by the motion itself, his earlier claims of innocence as it relates to the charges here.

THE COURT: There are several objections. I'm not sure whether they stand as objections right now, but Paragraph 9 of the presentence report appears to be boldfaced, which normally indicates there's an objection to it. Is that presently being objected to, Mr. Robinson?

MR. ROBINSON: I'm sorry, Your Honor?

THE COURT: Paragraph 9 of the presentence report, is that presently being objected to?

MR. ROBINSON: Let me -- Your Honor, are you referring to his efforts to comply with bond conditions?

THE COURT: It's a paragraph that begins: "On September 1st, 2010, Mr. Carpenter was released on bond and was required to reside at Kalamazoo Probation Enhancement Program."

MR. ROBINSON: Yes, Your Honor. Yes, Your Honor.

THE COURT: Yes what?

MR. ROBINSON: You said did he make these statements?

THE COURT: No, is this being objected to or is this not in issue at this time? Apparently there was some drug testing and there was absconding from the KPEP program. Is that being objected to or is that not?

MR. ROBINSON: Not for purposes of this motion, Judge. Again, that supports his earlier claims of innocence.

THE COURT: Well, I'm not sure I would read it that way, but I'm saying is there an objection to the facts contained within that paragraph?

MR. ROBINSON: Your Honor, we would urge that that be accepted only for purposes of establishing his early protestations of innocence.

THE COURT: Well, that wasn't my question. My question is are those -- there may be implications drawn from the facts, but are the facts being objected to for any reason?

MR. ROBINSON: Implications drawn from the fact of what?

THE COURT: Are there -- let me go through this again. Are there any objections factually to what Paragraph 9 contains?

MR. ROBINSON: Just a moment, Your Honor.

(Defense counsel conferred with Defendant Carpenter.)

MR. ROBINSON: Your Honor, we acknowledge the truth of the statement under Paragraph 9.

THE COURT: There are statements and facts that are alleged to have occurred in Paragraph 13 as well, and -- yes, that are being contested. If all are admitted, I'll say 9 is admitted, not an issue.

(Defense counsel conferred with Defendant Carpenter.)

MR. ROBINSON: Your Honor, as it relates to a statement under Paragraph 13, Mr. Carpenter acknowledges the truth except with the exception of the last sentence relating to a struggle. He indicates that he did not struggle with anyone, that at that time the officers had weapons pointed at him and he certainly had no struggle, made any effort to prevent being handcuffed. Is that what the Court had referenced earlier?

THE COURT: Yes, that was partially what I had. I want to see what Mr. Courtade -- where are we --

MR. ROBINSON: He denies that.

THE COURT: Okay. Where are we on that issue, Mr. Courtade?

MR. COURTADE: Your Honor, as the Pretrial Services officer indicates, the police reports are replete with officers making statements that they had -- it took several of them to get the handcuffs on the defendant. Now, whether the word "struggle" is the right word or whether it's difficulty

getting handcuffs on him, I think the implication is the same, and that is that the defendant was not a -- did not willingly just put his hands behind his back. So if the word "struggle" is too strong, I would suggest the words that it took several officers to handcuff him would be more along the lines of it.

THE COURT: I don't believe it's material to this case, Mr. Robinson. Mr. Robinson, I'm striking that last sentence.

MR. ROBINSON: I'm sorry, Your Honor?

THE COURT: I'm going to strike that last sentence.

MR. ROBINSON: Very well.

THE COURT: I don't think it adds anything to this case. Now, Paragraph 20 I think is in contest, is it not?

(Defense counsel conferred with Defendant Carpenter.)

MR. ROBINSON: Your Honor, as it relates to the statement contained in Paragraph 20, Mr. Carpenter denies that statement and asserts that at the time he insisted that he had never sold drugs at all and never acknowledged buying or selling any cocaine of any kind.

MR. COURTADE: Your Honor, the Probation Department correctly asserts that the defendant was interviewed by two police officers, that he made the statements that are attributed to him. I would also point out that at his guilty plea he acknowledged under oath that he possessed the drugs with the intent to distribute them. So I would suggest that

while the defendant may deny and the report may be amended to reflect that the defendant disputes this, the factual assertion that he made the statement to the officers is correct.

THE COURT: Okay. I'm going to put this on the last page of 20 that Mr. Carpenter denies the factual assertions in this paragraph. Fair enough, Mr. Robinson?

MR. ROBINSON: Very well.

THE COURT: Okay. Anything else on the question of setting aside the plea? Anything else, either one of you?

MR. COURTADE: No, Your Honor. We would rest on our brief and the facts contained therein.

THE COURT: Well, frankly --

MR. ROBINSON: We have nothing further.

THE COURT: -- this Court has dealt with this matter it seems for several months. It started obviously early in the fall in October and it started with an attempt to take a plea, and it appears that that plea was aborted by the statements made by Mr. Carpenter at the time on the 15th of October. And apparently we were back here, the parties were back before the Court on the 21st of October, and this Court reviewed very carefully the transcript of what occurred -- well, the Court said good morning, so it must have been the morning of October the 21st. At that time the Court was presented with a plea agreement in this matter, which is

1:10-CR-236. Mr. Bruha was standing in for Mr. Courtade. Mr. Upshaw was representing Mr. Carpenter --

Mr. Upshaw said: Upon reflection and after consultation with me after we left the court on the 15th, my client is prepared and willing to tender a plea of guilty pursuant to a plea agreement. So the Court said -- asked if this agreement on the 21st indicated that Mr. Upshaw had carefully discussed the plea agreement, advised the client of his rights and the sentencing provisions and the consequences of entering this plea. And Mr. Upshaw said that he had carefully reviewed that, and he indicated further, as Mr. Robinson has articulated, with the exception of the government moving to dismiss the enhancement after Mr. Carpenter's plea of guilty is entered, which enhancement was significant for the defendant. By that I mean with the enhancement, his sentence would be significantly enhanced. Without this enhancement which had been dismissed, the situation had changed.

And so the Court brought the parties up to the bench, and the Court said: Mr. Carpenter, we can't really unwind the clock here. You were here less than a week ago, right? And Mr. Carpenter said, Yes. The Court said: At that time you entered -- you indicated you had not done anything wrong and you didn't know why you were here and you had some issues. I note that you've signed the last page of this plea

agreement in which you've indicated that you've read this plea agreement and you've carefully discussed this with your attorney. Mr. Carpenter said, Yes.

The Court said: And it calls for you to enter a plea to Count 1 of the indictment charging you with possession with intent to distribute five kilograms -- excuse me, five grams or more of cocaine base, crack cocaine. Is that correct? Yes, sir. Yes, Your Honor. The Court: It indicates in this plea agreement that you understand it and your attorney has advised you of your rights and possible defenses to these sentence guidelines and to the consequences of entering into this agreement. Do you understand that? And Mr. Carpenter said, Yes.

Do you understand the government has indicated that as to any supplemental informations and other such matters that may affect your sentencing of this matter, that it will move to dismiss them and you will have to go forward based upon this solely on Count 1? Mr. Carpenter: Yes, I do. The Court: You had a question before, but do you have a question now about this? Mr. Carpenter: No.

And then the Court said: Would you raise your right hand? Thereon Mr. Carpenter was sworn to tell the truth.

The Court then said: Is there anything mentally or physically that would in any way keep you from being able to participate? No. Have any other inducements or promises been

made to you other than such as contained in this seven-page agreement here? Mr. Carpenter: No. Has anyone threatened you or forced you in any way or made any promises of leniency or predicted what any sentence might be that this Court might render? Mr. Carpenter said: No. Are you satisfied with the representations of your lawyer, Mr. Upshaw, in this matter? Mr. Carpenter said: I am.

The Court said: Have you had an adequate opportunity this morning and at times before this morning to thoroughly discuss this matter with your attorney? Mr. Carpenter said: Yes. Do you understand in this matter that the government is contending that you or persons within your influence were in possession of crack cocaine stored at 609 Dayton Street in the city of Kalamazoo and that this matter was being stored at that address for purposes of later distribution, hence the possession with intent to distribute five grams or more of crack cocaine on or about the 25th of May? Mr. Carpenter: Yes. Do you understand that charge? Yes, I do. And what plea would you wish to make to that at this time? Guilty.

The Court: Do you understand that by entering this guilty plea, you give up the right to a trial, waive the right to a trial before a judge or a jury in this matter? Yes. And that you would be giving up your right to go forward at a trial where the government -- you would be presumed innocent

and the government would be required to prove your guilt beyond a reasonable doubt? Yes. Do you understand you would be giving up the right to call witnesses and subpoena witnesses and cross-examine the government's witnesses and present your own evidence, including your own testimony? Yes. Do you have any questions about the rights you would be giving up at a trial by this Court accepting your guilty plea? No. Do you understand that if the guilty plea is accepted, this would result in your conviction and eventually a sentence imposed by this Court? Yes.

You notice parenthetically here the questions that were asked have answers of yes or no, and Mr. Carpenter was appropriately answering them yes or no as the question indicates.

Let's proceed on. Do you understand in this matter that this charge carries a maximum penalty of up to 40 years and/or up to a $2,000,000 fine followed by at least four years and up to that of life of supervised -- on supervised release with a minimum penalty provision of five years in prison in this matter? Yes, Your Honor. Do you understand that five-year mandatory provision here over which this Court has no discretion, but has been established by Congress? Yes, I do. And that a $100 special assessment would be required to be levied, and that in all other respects this Court would be required to consider certain applicable sentence guidelines as

part of the sentencing considerations in addition to the minimum and maximum sentences? Mr. Carpenter said: Yes.

Then the Court proceeds as follows, and this is critical: Tell me what you did that you believe makes you wrong, that you did wrong here. Let the record reflect very carefully the Court asked for a narrative answer, deliberately requiring a defendant if the defendant wished to plead guilty to tender facts and circumstances from which this Court could determine whether or not guilt could be predicated upon this plea. The following was the answer: I possessed crack cocaine at 609 Dayton with the intent to deliver the narcotic.

The Court: That's in Kalamazoo? Yes, Kalamazoo, Michigan. How much did you have there, the Court asked. How much cocaine did you have approximately at 609 Dayton? Defendant Carpenter: Thirty-eight grams. The Court: Where had you gotten it? From a guy that I had met at Rockwell Park named Eric. Was it fronted to you or did you pay for it? Yes, it was fronted to me. How much did you -- was it fronted -- how much was the sale price? Answer: A thousand dollars. I'm sorry? One thousand dollars. I presume you were intending to resell it or were you intending to break it down? No, I was just going to give it away for a profit. The Court: In other words, you were going to resell it for more than a thousand dollars in order to keep the difference? Carpenter: Yes. Did you know this was unlawful? Yes, Your

Honor. And I would note here Mr. Carpenter was very respectful through this entire matter, very respectful.

The Court: This may seem like a strange question, but how did you know it was crack cocaine? Because that's what -- the guy who gave it to me, he already had mentioned it was. This Eric, is that right? Yes. Did you have reason to believe Eric? Mr. Carpenter: Yes, I guess so since it was, you know, basically already spoken upon before the drugs were in my possession. Had you had experience with Eric before? No. Did you know people who knew Eric? Mr. Carpenter: No, not offhand.

The Court: How did you know he wasn't selling you brown sugar or tea? Mr. Carpenter: Because the drugs smelled like drugs. Question of the Court: They smelled like it? Mr. Carpenter: Yeah. Was it in rock form? Mr. Carpenter: Yes. The Court: Several rocks or one rock? Mr. Carpenter: Just one. The Court: Kind of a large rock, wasn't it? Mr. Carpenter: Yes, Your Honor. The Court: Did you calculate from the size of the rock that it would have been thirty-eight, approximately thirty-eight grams? Mr. Carpenter: Yes.

Then the Court goes on about other drugs, and he says no. Then on the top of Page 10: That was the only thing? That was the only other drugs? Mr. Carpenter: Yes, in the residence, yes. The Court: Okay. Was there any on

you? Mr. Carpenter -- this is the question: Was there any on you? Mr. Carpenter: No. My girlfriend, she had some marijuana that I had, but I asked her to bring it into the house.

And then the critical final question: Why are you pleading guilty? Answer, Mr. Carpenter: Because I'd just like to accept my responsibility. I intended to deliver the drugs as stated here in the paperwork. The Court finally concluded there was a factual basis demonstrated.

Now, the reason why this Court is not going to set aside this guilty plea is as follows. This Court's colloquy followed very carefully the federal rules that relate -- 11 that relates to the taking of the plea. This Court's review of the plea agreement found that the plea agreement appeared to be full and fair and accurate. It appeared to have been signed by the then counsel.

And let me go back to this then counsel. This then counsel, Mr. Upshaw, has appeared in front of this Court many, many times. For what it's worth, he is a respectable member of the Kalamazoo County Bar and of the Federal Bar here. He has appeared I would say probably in the last decade when he has been on the court-appointed or the defender-appointed list that the Court has approved of many times in this court I would say two or three or four, five, maybe, times a year, representing various indigent defendants who cannot afford

counsel. Such was the case here.

This Court has only heard -- in its own memory, this is the second time this Court has ever heard anyone complain about Mr. Upshaw. He always comes on time. He always files his appearance on time. He's deferential to everyone. He's kind to everybody, including his clients. He has tried cases to a jury before this Court.

Are you with us here in this matter, Mr. Carpenter?

DEFENDANT CARPENTER: Yes. Yes, Your Honor.

THE COURT: Listen to me. I'm talking about you.

DEFENDANT CARPENTER: Okay.

THE COURT: He has tried a case, in fact I think he just tried one here last month before this Court to a jury, and capably so. So his competence, at least from this Court's perspective, and this Court has been trying cases in the circuit court as a trial judge and here in the federal court for almost 24 years for a total of almost 32 years, I suppose, total --

MR. ROBINSON: I'm sorry, Your Honor?

THE COURT: This Court has been a trial judge in the state circuit court and the federal district court for over 30 years. So when I say that Mr. Upshaw has to this Court's mind been a very capable lawyer in this court, I speak from much experience.

Let me go further in this. Further in this, this

Court looked at the preparation of a presentence report, and in fact when it accepted the plea on the 21st of October listed January 24th at 1:15 as the time set for the sentencing. It appears that in the interim, that is, after the 24th of October, it appears that not only was the presentence report prepared, but it appears from some documentation I have here that there was a motion filed on December 20th of Mr. Upshaw to withdraw. He asked for a public defender to be appointed because his client did not agree with him and was upset with him.

Without inquiring as to what the problem was, the Court asked if it was a communication problem between them. He said yes. The Court then appointed an assistant public defender who I am informed came along or was to have come along to also consult with Mr. Carpenter and also with Mr. Upshaw and to represent Mr. Carpenter at time of sentencing if necessary in this matter.

The date for sentencing was not changed. We proceeded to the date of sentencing. Mr. Carpenter was not here. He had been placed out in a halfway house, KPEP placement, subject to the rules and regulations of KPEP. We call it KPEP. It's the Kalamazoo halfway house. It appears that sometime on or about that month in early January that some rule violations are alleged to have occurred with Mr. Carpenter in KPEP, and this Court's not going to adjudicate

those because they're not terribly material to what we're doing here, but it appears that Mr. KPEP -- Mr. Carpenter left that facility for whereabouts unknown.

It appears that Mr. Upshaw was attempting to locate his client, and it appears that his client was arrested on or about the 3rd of March, early last month. And at the time of the 4th of March, right the day after his arrest, Judge Carmody as the magistrate to whom this was assigned, the arrest and the arraignments and other matters, granted the stipulation for substitution of counsel for Mr. Carpenter and set the first appearance on the bond violation before Judge Carmody with revoking the bond in the interim. A status conference was held by this Court on the 10th of March and defense counsel indicated they are not ready for sentencing, they'll be filing a motion to withdraw the plea, and the Court thereafter set sentencing for March 4th (sic), which is today.

While I find that the motion to withdraw the plea should be denied by virtue of the fact that this was an assertion of innocence that was not put forth at the time or after the plea was made, the Court finds a very clear and knowing plea entered with facts that were elucidated by Mr. Carpenter. The Court never prompted an answer from him as to the factual basis, and as I indicated, in one or more of his answers he went beyond the question to volunteer his girlfriend bringing in marijuana and other things which this

Court had not requested.

Now, why is that important? That's important because in looking at whether or not the plea is factually accurate and whether or not it's free and voluntary, this Court looks at the verbal and the nonverbal communication of the defendant while under oath to determine whether or not there has been some kinds of promises, some kinds of inducements, some kinds of misunderstanding, some kinds of miscommunication, and this Court frankly saw none on October 21st. And as I say, this Court does hundreds of these pleas. Did not see it.

I'm saying this partially because I want the Court of Appeals to know that the integrity of this plea-taking process can always be put in issue by one side, and when we get -- when they get down there in front of three judges at a motion time or at an argument time, many of whom have never taken a guilty plea, I want the record to clearly reflect that the taking of a guilty plea is one of the most serious and one of the most carefully undertaken proceedings that a United States district judge does in his or her description of responsibilities, and this case was no exception whatever to that.

Now, as we go to the presentence report, which I would note is some 20 pages in length, this Court would note that that plea agreement was largely undisputed. The criminal

record of the defendant was not disputed, and I might indicate it's quite lengthy, of which the Court was not at all aware at the time the Court took the plea, of course. The issues that are placed now before the Court are largely in the acceptance of responsibility area, both in the adjustment for acceptance of responsibility which was denied and in Paragraph 42 which is cited very appropriately by Mr. Robinson as being the assertions of Mr. Carpenter that he was being railroaded by the federal government and he's innocent. That response is totally at odds to what was taken under oath months before after having this Court and his then counsel having carefully reviewed this matter.

Now, what do I -- what should my response be to the fact that Mr. Carpenter now claims that Mr. Upshaw railroaded him and misrepresented to him what was going to happen? I think not. There obviously was concern at the first plea, big concern at the first plea about the subsequent filing, I presume career criminal or some other charge, which was to aggravate the minimum sentence and enhance the minimum sentence for this felony, and clearly Mr. Carpenter was upset at that first plea-taking process about that.

Defense counsel and government's counsel appear to have gotten together. They appear to have had an agreement that the government was going to withdraw that and dismiss that. That was not going to be placed before the Court, and

it has not been, and subsequent to that the plea agreement that the Court had before it on the 21st of October was entered.

So let there be no mistake. This is not a classic plea agreement, disagreement, ironed out, back with the same plea agreement with a plea. This is not. This was a different plea agreement with a substantial enhancement removed from it and not of consideration. That's your understanding?

MR. COURTADE: That is correct, Your Honor. After the first plea we filed the supplement. It was in place. The defendant asked us to remove that, which would have reduced his sentence by five years of the mandatory minimum required, and we did.

THE COURT: So the five-year minimum is not here before us?

MR. COURTADE: The five-year is. The ten-year is not.

THE COURT: The ten-year is not, I'm sorry. The additional five is not.

MR. ROBINSON: I'm sorry, what was that?

MR. COURTADE: If he would have pled guilty on October 16th, the day after he first attempted to plead, his mandatory minimum would have been ten years in prison. We removed that extra five years by the 21st or by the agreement

of the 21st.

THE COURT: So that the second plea entered that was entered on October 21st had only the five-year and a commitment that nothing else would be added, and that's contained within that agreement?

MR. COURTADE: Yes, Your Honor.

THE COURT: Understood?

MR. ROBINSON: That is understood, Your Honor.

THE COURT: Okay. Okay. Anything else as to the presentence report that the Court should turn its attention to, Mr. Robinson?

MR. ROBINSON: I believe not, Your Honor.

THE COURT: You and your client can come to the podium and I'll listen to remarks in allocution first from you and then from your client.

Let me ask first, Mr. Carpenter, have you had an opportunity to review this plea agreement?

DEFENDANT CARPENTER: The second plea agreement?

THE COURT: Excuse me, I'm sorry. I've got too much going here. Have you had a chance to review this Presentence Investigation Report that's the subject matter here?

DEFENDANT CARPENTER: Yes, I have.

THE COURT: Have you consulted with your lawyer, Mr. Robinson, about this and with Ms. Young about this?

DEFENDANT CARPENTER: Yes, I have.

THE COURT: Have they fairly represented their discussions with you, their objections which this Court has resolved in many cases? Except for the acceptance of responsibility, have they resolved them to your satisfaction?

DEFENDANT CARPENTER: Yes.

THE COURT: Very well. Are you satisfied with the representations of Mr. Robinson and Ms. Young in this matter?

DEFENDANT CARPENTER: Yes. I do have one, one issue I would like to put on the record, and that is the initial signing of my plea agreement was not under -- only under duress due to the fact that an enhanced sentence was involved. It was due to the fact that my attorney, Geoffrey Upshaw, he somehow -- well, not somehow, but he took a ruler and ink pen and scribed lines through the plea agreement, the waiver of rights, collateral attack, and things of this nature. He told me that this was me preserving all my rights, and he explained to me that I should plead guilty to secure the 33-month sentence and then attack every issue on appeal.

So when I saw that he had scribed lines through the plea agreement, it had me wary because I did not understand that that was the way rights should be preserved or not, let alone the fact that I was going to be enhanced that following morning had I not signed on October 14th. So what Geoffrey Upshaw explained to me was this was the fashion that Mark Courtade sent the plea agreement to his office. It's with

this so-called amendments or scribing of sentences through the initial plea agreement.

On the second agreement my attorney told me, Go in there, make up a story so I did not get caught with any relevant conduct, and go through the motions of the questions. He explained to me do not write "under duress" next to my name because it will only revert back. Just let me finish one second.

THE COURT: No, let me finish. Let me tell you that if that's true, you're committing perjury.

DEFENDANT CARPENTER: If what's true?

THE COURT: If you did that, you would have committed perjury.

DEFENDANT CARPENTER: This was at the advice of my counsel.

THE COURT: Excuse me. You were sworn. Your counsel wasn't sworn. Do you understand that you would have committed -- you would be telling me that you committed perjury?

DEFENDANT CARPENTER: Okay, but he --

THE COURT: Excuse me. Do you understand that?

DEFENDANT CARPENTER: Yes, I understand.

THE COURT: Okay. Continue, then.

DEFENDANT CARPENTER: Okay. So with this being said, he told me do not write "under duress" next to my name

because it will only put us in the same situation that we were in on the 15th. So with me thinking that my rights were preserved, that's when I requested transcripts of the two, the two hearings from the 15th and the 21st. Ever since that instance when I asked Geoffrey Upshaw to get my rights in writing from Mark Courtade, he told me that the Western District does not practice conditional pleas, and ever since then I have had the issue of trying to withdraw my plea from the very beginning.

THE COURT: You are correct this Western District does not take conditional pleas, and yours was not.

Counsel, do you have -- as an officer of this Court, do you have a copy of the plea agreement?

MR. ROBINSON: I'm sorry, Your Honor?

THE COURT: As counsel, as an officer of this Court, do you have a copy of that plea agreement?

MR. ROBINSON: Yes.

THE COURT: From Mr. Upshaw's file?

MR. ROBINSON: I'm assuming it's the same plea agreement.

MS. YOUNG: Are you referencing the ones with the strike-through, Your Honor?

THE COURT: I don't know. I'm referencing the one that's dated October 21st of '10.

MR. ROBINSON: Yes.

MS. YOUNG: Yes, we do have that.

MR. ROBINSON: Yes, we have a copy of that.

MR. COURTADE: Your Honor, there are no strike-throughs on the October 21st. There were no strike-throughs on the one you received on October 15th either. I have that one here in my hand.

What he's referring to is prior to the 15th, that would be like the 13th or the 14th, defense counsel asked that we strike out a waiver of appeal, which we did and which does not appear on the document on the 15th. We just -- when he struck it out on the proposed agreement and sent it to our office, we took out the complete agreement -- the complete waiver of appeal on the document from the 15th. And so the document that went on the 15th had no strikeouts on it because the paragraph had been removed.

THE COURT: And the one that the Court has that you dated October 20th, the one that was given to this Court and this Court showed Mr. Carpenter when his plea was taken on October the 24th -- 21st, excuse me, do not have any strikeouts?

MR. COURTADE: There are none. So what he's referring to is a draft copy.

THE COURT: I understand. I understand that. So I'm going to ask do you have the one that's dated October 20th of 2010?

MR. ROBINSON: Yes. That's the one that the Court accepted.

THE COURT: Right. Does that have strikeouts in it?

MS. YOUNG: It does not.

THE COURT: Okay. That -- I see. I see. I understand.

MR. ROBINSON: Your Honor, I think what Mr. Carpenter really has done was to indicate, and he's not a lawyer, a cause of confusion for him.

THE COURT: I understand his confusion. I have no confusion about it, and I don't think he had at the time because he was asked by this Court -- you saw my colloquy here.

MR. ROBINSON: Yes.

THE COURT: At this date here of October 21st, he was asked if this was his and if he had signed it, this one that I'm showing with no crosses out, no crossouts on it.

MR. ROBINSON: No.

THE COURT: Okay. Anything else, Mr. Carpenter?

DEFENDANT CARPENTER: No, that's it, Your Honor.

THE COURT: Okay. Very well. Are you satisfied, then, as you said with your counsel?

DEFENDANT CARPENTER: Yes, I am.

THE COURT: Very well. Would you wish to first make remarks and then your client, Mr. Robinson?

MR. ROBINSON: Your Honor, the Court has already reviewed the history of this case in detail, I guess on multiple occasions, including the time when the plea was accepted. Counsel has indicated that we're here before the Court pursuant to the Rule 11 agreement that this Court accepted that provides for the minimum five years, five-year sentence. We do not -- above that, we do not challenge the guidelines.

But as the Court has indicated, the Court has found that he accepted responsibility at the time he entered his plea. And although he may have been confused by some facts and circumstances and questions that developed thereto, this Court has insisted that his acceptance of responsibility was his acceptance, and I'm hopeful that the Court will determine the guidelines to allow for the acceptance of that responsibility notwithstanding what has happened prior here today.

In the Court's recitation of the history, the Court indicated that he was arraigned on the 4th. Your Honor, he walked into the court after not appearing. It was not that he was picked up on the street in some traffic violation. He walked into the court, and I believe I advised counsel that he was going to weeks before; that as soon as he could get some matters clear, he was going to walk into the court, and he did walk into the court. He did not try to run away. He did not

try to avoid what's going to happen here today. He was aware that whatever happened would impact his freedom for a long time. It was just a question of how long.

So what I'm saying, Your Honor, is that in light of the totality of this situation, in light of his lack of expertise, with the confusion that has appeared for him, and the fact that the Court is not required to follow guidelines, but must consult only, I'm hopeful that the Court will look at the facts of this case. And that is that on this particular day there were some drugs in this house with which Mr. Carpenter was associated, and I say associated by virtue of the fact that he lived there, and that's why he's here, living in this house where drugs were found and a determination and acknowledgment by him that he possessed those drugs with the intent to deliver.

Your Honor, we recognize that's what a reasonable sentence might be, and how we define reasonable is kind of like what's pretty. It's in the eyes of the beholder, and in this instance you are the beholder, Your Honor, in terms of determining what is reasonable. But I'm hopeful that in 2011 with the state of -- and let me just indicate one further concern, Your Honor.

We are in the U.S. District Court. We are here pursuant to federal law. We're here and bound by federal law. But people see the experience of people under similar

circumstances that are confronted with state law issues. I say that only, Your Honor, to indicate that there is a disparity between the two, and if I am a defendant faced with what I view as the harshness of federal law and my neighbor or my friend or my brother is faced with a more relaxed circumstance in state court, sometimes that would give rise to some confusion in my mind. Sometimes that would make me feel possibly that I was being treated unfairly, notwithstanding the fact we have two different systems with two different legislative bodies and two bodies with different policy matters as it relates to sentence.

But the bottom line in this case, you, Your Honor, must determine what's reasonable and fair. I don't think that my client, and even with this, what we have presented here today, the motion, et cetera, he's not deliberately being an obstructionist, not deliberately being an obstructionist, and I'm hoping that the Court would take that in consideration.

He at the time he entered a plea, Judge, was expecting a five-year sentence. Now, I'm aware that the plea agreement, the plea agreement does not suggest anything as it relates to guidelines and clearly indicates that the Court and the Court alone will determine guidelines as the Court alone will determine sentence. We're aware of that. But in approaching this, again I'm hopeful that the Court will not take our appearance here, what my client says as a complete

negative. I'm hopeful that the Court will look at the conduct, will look at his history, impose a reasonable sentence.

I would hope that the sentence will be -- the actual period would be confined to the statute, what the minimum statutory is pursuant to the plea agreement. I don't believe I have anything else. The Court has heard him, has been exposed to this throughout his history.

THE COURT: Thank you.

MR. ROBINSON: He's not a bad, bad fellow, and what's going to happen to him, I'm sure that even now he doesn't fully appreciate under all of the circumstances that it is completely fair. But when he walked in and surrendered, Your Honor, he accepted the responsibility with full knowledge that he did not know what this Court would decide and how much of his future life he would be denied his freedom. I believe I have nothing further.

THE COURT: Thank you. Thank you. Thank you, Mr. Robinson.

Mr. Carpenter, is there anything you'd wish to say before the Court imposes sentence?

DEFENDANT CARPENTER: No, Your Honor.

THE COURT: Mr. Courtade?

MR. COURTADE: I don't know if you remember the defendant's father, Petie Credell Carpenter. I believe you

sentenced him more than 15 years ago. He was sentenced on a drug charge. He's now living in Florida. I believe he was here in Michigan last summer with his brand new red Viper. The defendant says he got his drugs from an unknown person named Rick in the park. I really question that. I have real problems with the defendant's veracity.

As you impose sentence here, I think what you have to look at, one of the things you should look at is the defendant says he was expecting a 60-month sentence. Had the defendant not started trying to game the system with the probation agent, that might have been a possibility. His guideline range would have suggested to the Court a sentence of between 57 and 71 months.

But everything the defendant's done since then, his absconding on bond, his using marijuana, his telling these stories which are getting more and more outrageous, suggest to me that the decision not to award acceptance of responsibility credit is the right one to make because he has not. He's still trying even today to avoid responsibility for what he did by blaming counsel and blaming everyone but himself for what he did. I think that the Court should consider that strongly when it decides whether or not he is going to be amenable to rehabilitation is whether or not he accepts that what he did was wrong, and I don't know that he gets it.

THE COURT: Thank you. Thank you.

The Court appreciates, and Mr. Robinson, you've put your finger on some really valid issues of policy and other matters that are going on in the larger community. The Court is well aware of them.

This matter carries an adjusted offense level of 26, and as counsel indicated, the Court cannot permit here or cannot allow and accept the responsibility in part of the adjusted offense level calculations because it's not been had. So we leave it at a 26 with a criminal history level of III, which is a range of 78 to 96.

But the level of III is really, as it pertains to substance abuse trafficking and possession, really isn't a thorough history which begins with the possession of marijuana in District Court with a conviction on 3/7 of 2000; a possession of marijuana in Kalamazoo Circuit Court, a felony, on April 3rd of '01, a year later; a possession of marijuana in Kalamazoo District Court on October 14th of 2003, and for some reason I've got the same October 1 of '03, a possession of marijuana in Kalamazoo District Court; and a possession of marijuana in St. Joe Circuit Court on May 21st of '08. So I have five drug convictions, marijuana convictions, drug convictions in the last ten years. And I note here that the sentences of them are, as Mr. Robinson indicated, minimal sentences. They're not dramatic sentences. They're not sentences that would stop one in their tracks, one would

think, and so there is a disparity.

In this case Mr. Carpenter was -- task force obviously was part of the search that gave rise to this case, including state and federal officers. This involves 38 grams of crack cocaine. There's been much discussion in Congress about the hundred-to-one and now it's an eighteen-to-one ratio of crack to powder. There are some who would indicate that it ought to be one-to-one. For what it's worth, this Court believes that eighteen-to-one is probably a good, at long last, a good resolution of that tension between one and the other, crack cocaine being obviously exceedingly more addictive, connected with much more violence nationally and internationally.

It appears that the nature and circumstances, then, of this offense, being that of a rather substantial quantity, at least from a street standpoint, of crack cocaine and the history and characteristics of Mr. Carpenter, there is some reference to drug use while at the halfway house and drug testing at the halfway house. But I don't think this Court has to deal with that other than make mention that it showed itself again.

So it is this Court's duty under Section 3553(a) of the federal statute to impose a sufficient sentence to comply with the statute's purpose, but not more than is necessary. The Court looks at whether or not this is a serious offense,

and it is; and whether or not there has been respect for the law and whether or not this would promote respect. Well, it appears that if one looks back over the last ten years, Mr. Carpenter has little, if any, respect for the laws of the state of Michigan or the United States as it applies to substance abuse. And that is of great concern to this Court, not only the pattern of the sentence convictions, but the fact that he's here with 38 grams.

A just punishment means that some kind of an adequate deterrence must be made to this criminal conduct because it would appear that absent a deterrent sentence, there is a substantial likelihood of recidivism, and that must be a criteria the Court employs. This Court doesn't believe that the protection of the public is a major factor to consider, but this Court believes that educational and correctional treatment is a factor that this Court should very seriously consider as part of this Court's matrix of sentencing in this matter.

So accordingly the sentence of this Court will be that of 96 months in the custody of the Federal Bureau of Prisons. That is within the sentence range, although this Court is not bound by the sentence guideline range. It's a guideline. This Court finds that it's a sufficient guideline in this case with two recommendations to the Federal Bureau of Prisons.

First, that Mr. Carpenter be evaluated and treated for substance abuse. He has a long history in it, probably many occasions of attempt to treat that, but we will give the prison officials an opportunity and him hopefully another chance to see if he can get away from this issue.

Secondly, and very importantly, this Court finds that Mr. Carpenter is an intelligent young man, albeit unmarried, albeit there are four tiny children that have been born out of wedlock to him, but he should be given vocational and educational training. This Court believes that with the right attitude and with his intelligence and abilities, he should be able to secure much education that will serve him well in the marketplace after he comes out of this prison sentence. There is an old saying, You can lead the horse to the water, but you can't make the horse drink. So we can provide drug services, I can require the provision of educational and vocational services, but unless Mr. Carpenter wants to avail himself of those, he will not be benefited.

Thereafter, five years of supervised release in the community with the standard conditions of reporting and remaining law-abiding. No drugs, no guns, and no alcohol. Any drugs, guns or alcohol, back to prison we go. No association with drug users or drug possessors. No association with ex-felons without the permission of the probation officer, to live only in a location and with persons

approved by the probation officer, to make complete financial disclosure of his workplace income and his expenditures and the extensions for credit which he has acquired, and to be gainfully employed.

There will be, of course, child support for these children taken out of any monies he may earn while in the Bureau of Prisons. Therefore, this Court believes that these children should get some money that he makes while within the industries of the Bureau of Prisons and believes the state can take care of itself or the nation can take care of itself in that regard. The mandatory special assessment of $100 will be required to be repaid.

Do you have a motion as it pertains to Count 2 of the indictment, Mr. Courtade?

MR. COURTADE: Yes, Your Honor, both as to Count 2 and the supplemental information previously filed. We'd ask that they be dismissed pursuant to the plea agreement.

THE COURT: Dismissed. Any legal objection to the sentence imposed not previously raised, Mr. Courtade?

MR. COURTADE: None, Your Honor.

THE COURT: Mr. Robinson?

MR. ROBINSON: None, Your Honor.

THE COURT: You have a right of appeal of this sentence and this conviction. You have 14 days within which to file that appeal. Those forms are being given to you. You

will be remanded to the custody of the marshal for the execution of sentence in this matter.

The Court specifically wants to thank you, Mr. Robinson and Ms. Young, for your able representation on behalf of Mr. Carpenter in this matter. That's all for the record.

MR. ROBINSON: Thank you, Your Honor.

(Proceedings concluded at 2:58 p.m.)

CERTIFICATE OF REPORTER

I, Kevin W. Gaugier, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript was prepared by me.

/s/ Kevin W. Gaugier

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